



IN REPLY TO:  
3160

## United States Department of the Interior

### BUREAU OF LAND MANAGEMENT

Miles City Field Office  
111 Garryowen Road  
Miles City, Montana 59301  
<http://www.mt.blm.gov/mcfo>



July 28, 2005

Fort Peck Tribes  
Ray K Eder, Chairman  
PO Box 1027  
Poplar MT 59255  
Attn: Curley Youpee & Carl Fourstar

Certified Mail No.  
Return Receipt Requested

Dear Potential Cooperating Agency:

By Order of the U. S. District Court for the District of Montana, the Bureau of Land Management (BLM) is preparing a Supplement (SEIS) to the Final EIS for the 2003 *Montana Final Statewide Oil and Gas Final Environmental Impact Statement and Amendment of the Powder River and Billings RMPs*. The document will amend the Powder River and Billings RMPs (SEIS/Amendment). Per the Court, the scope of the SEIS/Amendment will be limited to considering and evaluating the effects of phased CBNG development for CBNG production in the Billings and Powder River RMP areas (see attached map). It is scheduled for completion by December 2006.

As we embark on this process, BLM is requesting federal, state, tribal, and local government help in preparing the plan. This is done by becoming a Cooperating Agency -- a special status among interested parties.

To this end, we encourage you to review, revise, and return the attached draft Memorandum of Understanding (MOU). The MOU provides more information about the SEIS/Amendment process (including a milestone schedule), as well as the roles and responsibilities of BLM and the Cooperating Agency. The MOU is intended to establish an atmosphere of sharing between the parties, recognizing and respecting the authority and responsibility of both entities. We will work together on the MOU until the wording is agreeable to both of us. Upon signing, it will formally designate you as a Cooperating Agency.

The notice announcing BLM's intent to plan and scoping is to be printed in the *Federal Register* August 5th. BLM will hold public scoping meetings to help define "phased development" the week of August 22nd. The meetings will be held as follows:

Broadus, MT	August 22 <sup>nd</sup>	6:00 pm to 8:00 pm
Lame Deer, MT	August 23 <sup>rd</sup>	5:00 pm to 7:00 pm
Billings, MT	August 24 <sup>th</sup>	6:00 pm to 8:00 pm
Miles City, MT	August 25 <sup>th</sup>	6:00 pm to 8:00 pm

Please let us know if you intend on becoming a Cooperating Agency. If you have questions or would like an e-mail version of the draft MOU, give me a call at (406) 233-2827, or Mary Bloom, Project Leader, at (406) 233-2852.

Sincerely,

David McInay  
Field Office Manager

Attachment: Map

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
MONTANA BUREAU OF LAND MANAGEMENT  
MILES CITY FIELD OFFICE  
AND THE  
FORT PECK TRIBES**

This MEMORANDUM OF UNDERSTANDING (MOU) for the preparation of the Supplement to the Final EIS for the 2003 *Montana Final Statewide Oil and Gas Final Environmental Impact Statement and Amendment of the Powder River and Billings RMPs* (SEIS) is by and between the Bureau of Land Management, Miles City Field Office (hereinafter referred to as the BLM) and the Fort Peck Tribes, hereinafter referred to as the Cooperating Agency), and sometimes jointly referenced as "the Parties".

By Order of the U. S. District Court for the District of Montana, the BLM is to prepare an SEIS to consider and evaluate the effects of phased coal bed natural gas (CBNG) development for CBNG production in the Billings and Powder River RMP areas. The document will amend the Powder River and Billings RMPs (SEIS/Amendment). The SEIS/Amendment is scheduled for completion by December 2006.

#### **I. INTRODUCTION**

1. Under federal law, BLM is lead agency for the SEIS/Amendment. The SEIS/Amendment must conform to requirements of the Federal Land Policy and Management Act (FLPMA) and the National Environmental Policy Act (NEPA). BLM has the responsibility for the content of the SEIS/Amendment and its conformance to FLPMA and compliance with NEPA, including the Draft and Final SEIS/Amendment. BLM is also responsible for requesting the participation of other federal, state, tribal, and local government agencies and entities, and for cooperatively using their expertise as it conducts the SEIS/Amendment process.

2. In pursuing this responsibility, BLM seeks to enlist the Fort Peck Tribes as a Cooperating Agency -- a special status among interested parties -- in order to engage its full participation in the preparation of the Draft and Final SEIS/Amendment. It is the intention of this MOU to establish an atmosphere of sharing between the parties where full recognition and respect to the authority and responsibility of both of the government entities is recognized.

3. The Cooperating Agency has interests in all planning area activities, including those activities taking place on lands managed by BLM; therefore, it has a high level of interest in the outcome of the SEIS/Amendment. BLM recognizes that the Cooperating Agency may have knowledge and expertise relative to the planning area in providing long-term direction for social and natural resources, and other matters, all of which may be addressed in the SEIS/Amendment.

4. Additionally, BLM and the Cooperating Agency both have obligations to the public in maintaining the quality of the human environment, the regional economy, the sustainability of local communities, public health, and the regional resource base.

5. The Cooperating Agency asserts that law and regulations governing NEPA, FLPMA, CEQ, and BLM accord the Cooperating Agency all the rights and privileges regarding access to planning documents and processes contemplated in this MOU. The Cooperating Agency desires to enter into this MOU because of its interest in participating with the BLM in a fully collaborative planning process.

6. The Parties agree that the Cooperating Agency may implement land use plans and management guidelines to address issues involving public lands and other lands within its boundaries as long as those plans are consistent with federal plans. This MOU shall not impair the right of the Cooperating Agency under state and federal law to participate in and influence federal land use planning and administration, including the right to a consistency review of federal land use plans and decisions as they relate to the Cooperating Agency's plans.

7. The Cooperating Agency reserves the right to protest the proposed decisions of the SEIS/Amendment.

#### **II. PURPOSE**

The purpose of this MOU between BLM and the Cooperating Agency is to:

1. Confirm the formal designation of BLM as lead agency with responsibility for the completion of the Draft SEIS/Amendment, Final SEIS/Proposed Amendment, and Record of Decision (ROD);

2. formally designate the Cooperating Agency in the SEIS/Amendment planning process;

3. formalize and provide a framework for cooperation and coordination between BLM and the Cooperating Agency in order to successfully complete the SEIS/Amendment in a timely, efficient, and thorough manner;

4. describe the respective roles, responsibilities, jurisdictional authority, and expertise of each entity in the planning process; and

5. ensure that the working relationship between BLM and the Cooperating Agency meets the purposes and intent of NEPA.

#### **III. POINTS OF CONTACT**

Mary Bloom, BLM Project Manager, will be the primary point of contact in ensuring coordination among the cooperating agencies and the BLM during the planning process. \_\_\_\_\_ will be the Fort Peck Tribes primary point of contact. The BLM's SEIS/Amendment contractor will assist BLM in the planning process, especially Cooperating Agency coordination.

#### **IV. AUTHORITIES FOR AGREEMENT**

The authority for BLM and the Cooperating Agency to participate in this agreement is provided in NEPA, 42 USC 4321 et seq. and 40 CFR 1501.6 (Cooperating Agencies), 1506.2 (Elimination of Duplication with State and Local Procedures), and 1508.5 (Cooperating Agency). Additional authorities rest in FLPMA, 43 USC 1712 et seq., which mandate coordination of planning and management efforts with the programs of state and local governments, which may be affected by BLM planning actions.

#### **V. ROLES AND RESPONSIBILITIES**

##### **a. BLM Responsibilities**

The BLM as Lead Agency is responsible for the following:

i. Preparation of, quality of, and content of the Draft SEIS/Amendment, the Final SEIS/Proposed Amendment and the Record of Decision.

ii. Enabling the Cooperating Agency to provide meaningful comments in the SEIS/Amendment process by providing the following opportunities:

- involvement in identifying issues and concerns relative to CBNG phased development,
- involvement in identifying or providing data that is suitable, available, and relevant to the process;
- identification of a reasonable range of CBNG phased development alternatives, or portions thereof which are geared towards resolving the issues that may be of concern to the Cooperating Agency. This may include, but is not limited to appropriate mitigation measures or monitoring, recommendation for a preferred alternative; and
- review and comment on preliminary sections of the SEIS/Amendment due to its jurisdictional responsibilities or special expertise.

iii. Considering to the extent possible and incorporating as appropriate, the information provided by the Cooperating Agency into the document.

iv. Making all final determinations on the content of SEIS/Amendment.

#### b. Fort Peck Tribes Responsibilities

The Fort Peck Tribes as a Cooperating Agency having both jurisdictional responsibilities and special expertise in areas related to the SEIS/Amendment, is responsible for the following:

i. Consolidating the comments of the Fort Peck Tribes.

ii. Assisting BLM in the identification of the issues and concerns related to phased CBNG development to be addressed in the SEIS/Amendment effort.

iii. Providing relevant data, which may assist in the SEIS/Amendment process. This data will include but is not limited to the following:

- information relative to Cooperating Agency knowledge and expertise on approved programs, plans, and policies that will be affected by the planning effort (this information is to serve as a basis for future consistency reviews);
- information relative to the analysis of air quality; and
- other such information as may be of interest to the Cooperating Agency and which is relevant to the issues or data needs.

iv. Reviewing and providing comments of preliminary baseline reports or other technical reports where the Fort Peck Tribes has provided data or other such information in order to complete the report.

v. Reviewing and providing comments on the following sections of the preliminary draft SEIS/Amendment. The Cooperating Agency will comment on all preliminary documents within two weeks of receipt. If additional review time is needed, the Cooperating Agency may use the public review period to complete and submit comments.

- preliminary range of CBNG phased development alternatives to be considered in detail,
- relevant portions of the Affected Environment SEIS/Amendment section,
- relevant portions of the Environmental Consequences SEIS/Amendment section, and
- relevant portions of the Consultation and Coordination SEIS/Amendment section.

vi. providing the BLM a consolidated comprehensive review of the Draft SEIS/Amendment.

#### VI. FUNDING

Each entity agrees to fund its own expenses with this planning process.

#### VII. JOINT RESPONSIBILITIES

The parties agree to use their best efforts to meet the timeframes established in the agreement, to work cooperatively, and to resolve differences as quickly as possible. The schedule for this SEIS/Amendment is provided in Attachment B, and hereby made a part of this Agreement. BLM will promptly inform the Cooperating Agency of all schedule changes that would affect the Cooperating Agency's input into the document.

The Parties agree not to employ the services of any third party having a financial interest in the outcome of the SEIS/Amendment. The Parties will take all necessary steps to ensure that no conflict of interest exists with any consultants, counsel, or representatives they may employ in this undertaking.

#### VIII. IMPLEMENTATION, AGREEMENT AND TERMINATION

This agreement becomes effective upon signature by all parties, and may be subsequently amended through written agreement of all signatories. The BLM or Cooperating Agency may terminate this agreement by providing written notice of termination to the other party. If not terminated sooner, this agreement will end when the notice of availability for the Final SEIS/Proposed Amendment is published in the *Federal Register*.

Nothing in this agreement will abridge or amend the authorities and responsibilities of the BLM or Cooperating Agency or any other party on any matter under their respective jurisdictions.

Nothing in this agreement may be construed to require the Cooperating Agency or BLM to obligate or pay funds or in any other way take action in violation of the Anti-Deficiency Act (31 USC 1341) or any state or county or Tribal law or ordinance.

#### IX. SOVEREIGN IMMUNITY

Neither signatory waives their sovereign immunity by entering into this MOU, and each fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this agreement.

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**X. SIGNATURES**

The parties hereto have executed this MOU as of the dates shown below.

\_\_\_\_\_  
Bureau of Land Management (Date)  
David McInay  
Miles City Field Office Manager

\_\_\_\_\_  
Fort Peck Tribes (Date)  
Ray K. Eder  
Chairman

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**ATTACHMENT A  
POINTS OF CONTACT**

**Bureau of Land Management**

Primary

Mary Bloom, Miles City SEIS/Amendment Project Manager  
Miles City Field Office  
111 Garryowen Road  
Miles City, Montana 59301  
(406) 233-2800  
mbloom@blm.gov

**Fort Peck Tribes**

Primary

ATTACHMENT B  
PROJECT MILESTONES

- August 2005: Scoping Meetings
- August 2005: Scoping Report Prepared
- September 2005: Alternative Development, including Preferred, Completed
- January 2006: Draft SEIS/Amendment published
- January - April 2006: Public Comment Period (90 days)
- February 2006: Public Meetings
- August 2006: Final SEIS/Proposed Amendment Published
- August 2006: Public Protest Period (30 days)
- December 2006: Record of Decision Published